UNITED STATES v. EDUARDO GUERRERO
U.S.D.C. Case No. 08CR1362-DMS-01

INDEX OF EXHIBITS

Reporter's Partial Transcript of Proceedings Dated January 11, 2007 (Exhibit A). . . . . Page 2
Reporter's Transcript of Proceedings Dated January 11, 2007 (Exhibit B). . . . . Page 35

EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: THE IMPANELMENT)
OF GRAND JURY PANELS 07-1 AND)
07-2)
_________________________________)

BEFORE THE HONORABLE LARRY ALAN BURNS

UNITED STATES DISTRICT JUDGE

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JANUARY 11, 2007

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SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-9:30 A.M.

THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN SELECTED TO SIT ON THE GRAND JURY. IF YOU'LL STAND AND RAISE YOUR RIGHT HAND, PLEASE.

MR. HAMRICK: DO YOU, AND EACH OF YOU, SOLEMNLY SWEAR OR AFFIRM THAT YOU SHALL DILIGENTLY INQUIRE INTO AND MAKE TRUE PRESENTMENT OR INDICTMENT OF ALL MATTERS AND THINGS AS SHALL BE GIVEN TO YOU IN CHARGE OR OTHERWISE COME TO YOUR KNOWLEDGE TOUCHING YOUR GRAND JURY SERVICE; TO KEEP SECRET THE COUNSEL OF THE UNITED STATES, YOUR FELLOWS AND YOURSELVES; NOT TO PRESENT OR INDICT ANY PERSON THROUGH HATRED, MALICE OR ILL WILL; NOR LEAVE ANY PERSON UNREPRESENTED OR UNINDICTED THROUGH FEAR, FAVOR, OR AFFECTION, NOR FOR ANY REWARD, OR HOPE OR PROMISE THEREOF; BUT IN ALL YOUR PRESENTMENTS AND INDICTMENTS TO PRESENT THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TO THE BEST OF YOUR SKILL AND UNDERSTANDING?

IF SO, ANSWER, "I DO."

(ALL GRAND JURORS ANSWER AFFIRMATIVELY)

THE COURT: ALL JURORS HAVE TAKEN THE OATH AND ANSWERED AFFIRMATIVELY.

IF YOU'LL HAVE A SEAT. WE ARE NEARLY COMPLETED WITH THIS PROCESS.

I AM OBLIGATED BY THE CONVENTION OF THE COURT AND THE LAW OF THE UNITED STATES TO GIVE YOU A FURTHER CHARGE REGARDING YOUR RESPONSIBILITY AS GRAND JURORS. THIS WILL

APPLY NOT ONLY TO THOSE WHO HAVE BEEN SWORN, BUT THE REST OF YOU WHOSE NAMES HAVE NOT YET BEEN CALLED, YOU ARE GOING TO BE PUT IN RESERVE FOR US.

AND IF DISABILITIES OCCUR -- I DON'T MEAN IN A PHYSICAL SENSE, BUT PEOPLE MOVE OR SITUATIONS COME UP WHERE SOME OF THE FOLKS THAT HAVE BEEN SWORN IN TODAY ARE RELIEVED, YOU WILL BE CALLED AS REPLACEMENT GRAND JURORS. SO THESE INSTRUCTIONS APPLY TO ALL WHO ARE ASSEMBLED HERE TODAY.

NOW THAT YOU HAVE BEEN IMPANELED AND SWORN AS A GRAND JURY, IT'S THE COURT'S RESPONSIBILITY TO INSTRUCT YOU ON THE LAW WHICH GOVERNS YOUR ACTIONS AND YOUR DELIBERATIONS AS GRAND JURORS.

THE FRAMERS OF OUR FEDERAL CONSTITUTION DETERMINED AND DEEMED THE GRAND JURY SO IMPORTANT TO THE ADMINISTRATION OF JUSTICE THAT THEY INCLUDED A PROVISION FOR THE GRAND JURY IN OUR BILL OF RIGHTS.

AS I SAID BEFORE, THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES, IN PART, THAT NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME WITHOUT ACTION BY THE GRAND JURY.

WHAT THAT MEANS IN A VERY REAL SENSE IS YOU'RE THE BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH A CRIME AND THAT CASE GOING FORWARD OR NOT GOING FORWARD.

THE FUNCTION OF THE GRAND JURY, IN FEDERAL COURT AT LEAST, IS TO DETERMINE PROBABLE CAUSE. THAT'S THE SIMPLE

FORMULATION THAT I MENTIONED TO A NUMBER OF YOU DURING THE JURY SELECTION PROCESS. PROBABLE CAUSE IS JUST AN ANALYSIS OF WHETHER A CRIME WAS COMMITTED AND THERE'S A REASONABLE BASIS TO BELIEVE THAT AND WHETHER A CERTAIN PERSON IS ASSOCIATED WITH THE COMMISSION OF THAT CRIME, COMMITTED IT OR HELPED COMMIT IT.

IF THE ANSWER IS YES, THEN AS GRAND JURORS YOUR FUNCTION IS TO FIND THAT THE PROBABLE CAUSE IS THERE, THAT THE CASE HAS BEEN SUBSTANTIATED, AND IT SHOULD MOVE FORWARD. IF CONSCIENTIOUSLY, AFTER LISTENING TO THE EVIDENCE, YOU SAY "NO, I CAN'T FORM A REASONABLE BELIEF EITHER THAT A CRIME WAS COMMITTED OR THAT THIS PERSON HAS ANYTHING TO DO WITH IT, THEN YOUR OBLIGATION, OF COURSE, WOULD BE TO DECLINE TO INDICT, TO TURN THE CASE AWAY AND NOT HAVE IT GO FORWARD.

A GRAND JURY CONSISTS OF 23 MEMBERS OF THE COMMUNITY DRAWN AT RANDOM. I'VE USED THE TERM "INFAMOUS CRIME." AN INFAMOUS CRIME, UNDER OUR LAW, REFERS TO A SERIOUS CRIME WHICH CAN BE PUNISHED BY IMPRISONMENT BY MORE THAN ONE YEAR. THE PROSECUTORS WILL PRESENT FELONY CASES TO THE GRAND JURY. MISDEMEANORS, UNDER FEDERAL LAW, THEY HAVE DISCRETION TO CHARGE ON THEIR OWN. AND THEY'RE NOT -- THOSE CHARGES -- MISDEMEANORS AREN'T ENTITLED TO PRESENTMENT BEFORE A GRAND JURY.

BUT ANY CASE THAT CARRIES A PENALTY OF A YEAR OR MORE MUST BE PRESENTED TO -- ACTUALLY, MORE THAN A YEAR. A

YEAR AND A DAY OR LONGER MUST BE PRESENTED TO A GRAND JURY.

THE PURPOSE OF THE GRAND JURY, AS I MENTIONED, IS TO DETERMINE WHETHER THERE'S SUFFICIENT EVIDENCE TO JUSTIFY A FORMAL ACCUSATION AGAINST A PERSON.

IF LAW ENFORCEMENT OFFICIALS -- AND I DON'T MEAN THIS IN A DISPARAGING WAY. BUT IF LAW ENFORCEMENT OFFICIALS, INCLUDING AGENTS AS WELL AS THE FOLKS THAT STAFF THE U.S. ATTORNEY'S OFFICE, WERE NOT REQUIRED TO SUBMIT CHARGES TO AN IMPARTIAL GRAND JURY TO DETERMINE WHETHER THE EVIDENCE WAS SUFFICIENT, THEN OFFICIALS IN OUR COUNTRY WOULD BE FREE TO ARREST AND BRING ANYONE TO TRIAL NO MATTER HOW LITTLE EVIDENCE EXISTED TO SUPPORT THE CHARGE. WE DON'T WANT THAT. WE DON'T WANT THAT.

WE WANT THE BURDEN OF THE TRIAL TO BE JUSTIFIED BY SUBSTANTIAL EVIDENCE, EVIDENCE THAT CONVINCES YOU OF PROBABLE CAUSE TO BELIEVE THAT A CRIME PROBABLY OCCURRED AND THE PERSON IS PROBABLY RESPONSIBLE.

NOW, AGAIN, I MAKE THE DISTINCTION YOU DON'T HAVE TO VOTE ON ULTIMATE OUTCOMES. THAT'S NOT UP TO YOU. YOU CAN BE ASSURED THAT IN EACH CASE, YOU INDICT THE PERSON WHO WILL BE ENTITLED TO A FULL SET OF RIGHTS AND THAT THERE WILL BE A JURY TRIAL IF THE PERSON ELECTS ONE. THE JURY WILL HAVE TO PASS ON THE ACCUSATION ONCE AGAIN USING A MUCH HIGHER STANDARD OF PROOF, PROOF BEYOND A REASONABLE DOUBT.

AS MEMBERS OF THE GRAND JURY, YOU, IN A VERY REAL

SENSE, STAND BETWEEN THE GOVERNMENT AND THE ACCUSED. IT'S YOUR DUTY TO SEE THAT INDICTMENTS ARE RETURNED ONLY AGAINST THOSE WHOM YOU FIND PROBABLE CAUSE TO BELIEVE ARE GUILTY AND TO SEE TO IT THAT THE INNOCENT ARE NOT COMPELLED TO GO TO TRIAL OR EVEN COMPELLED TO FACE AN ACCUSATION.

IF A MEMBER OF THE GRAND JURY IS RELATED BY BLOOD OR MARRIAGE OR KNOWS OR SOCIALIZES TO SUCH AN EXTENT AS TO FIND HIMSELF OR HERSELF IN A BIASED STATE OF MIND AS TO THE PERSON UNDER INVESTIGATION OR ALTERNATIVELY YOU SHOULD FIND YOURSELF BIASED FOR ANY REASON, THEN THAT PERSON SHOULD NOT PARTICIPATE IN THE INVESTIGATION UNDER QUESTION OR RETURN THE INDICTMENT.

ONE OF OUR GRAND JURORS, MS. GARFIELD, HAS RELATIVES THAT -- OBVIOUSLY, MS. GARFIELD, IF YOUR SON OR YOUR HUSBAND WAS EVER CALLED IN FRONT OF THE GRAND JURY, THAT WOULD BE A CASE WHERE YOU WOULD SAY, "THIS IS JUST TOO CLOSE. I'M GOING TO RECUSE MYSELF FROM THIS PARTICULAR CASE. NO ONE WOULD IMAGINE THAT I COULD BE ABSOLUTELY IMPARTIAL WHEN IT COMES TO MY OWN BLOOD RELATIVES."

SO THOSE ARE THE KINDS OF SITUATIONS THAT I REFER TO WHEN I TALK ABOUT EXCUSING YOURSELF FROM A PARTICULAR GRAND JURY DELIBERATION. IF THAT HAPPENS, YOU SHOULD INDICATE TO THE FOREPERSON OF THE GRAND JURY, WITHOUT GOING INTO DETAIL, FOR WHATEVER REASON, THAT YOU WANT TO BE EXCUSED FROM GRAND JURY DELIBERATIONS ON A PARTICULAR CASE OR CONSIDERATION OF A

PARTICULAR MATTER IN WHICH YOU FEEL YOU'RE BIASED OR YOU MAY HAVE A CONFLICT.

THIS DOES NOT MEAN THAT IF YOU HAVE AN OPPORTUNITY, YOU SHOULD NOT PARTICIPATE IN AN INVESTIGATION. HOWEVER, IT DOES MEAN THAT IF YOU HAVE A FIXED STATE OF MIND BEFORE YOU HEAR EVIDENCE EITHER ON THE BASIS OF FRIENDSHIP OR BECAUSE YOU HATE SOMEBODY OR HAVE SIMILAR MOTIVATION, THEN YOU SHOULD STEP ASIDE AND NOT PARTICIPATE IN THAT PARTICULAR GRAND JURY INVESTIGATION AND IN VOTING ON THE PROPOSED INDICTMENT. THIS IS WHAT I MEANT WHEN I TALKED TO YOU ABOUT BEING FAIR-MINDED.

ALTHOUGH THE GRAND JURY HAS EXTENSIVE POWERS, THEY'RE LIMITED IN SOME IMPORTANT RESPECTS.

FIRST, THESE ARE THE LIMITATIONS ON YOUR SERVICE: YOU CAN ONLY INVESTIGATE CONDUCT THAT VIOLATES THE FEDERAL CRIMINAL LAWS. THAT'S YOUR CHARGE AS FEDERAL GRAND JURORS, TO LOOK AT VIOLATIONS OR SUSPECTED VIOLATIONS OF FEDERAL CRIMINAL LAW.

YOU ARE A FEDERAL GRAND JURY, AND CRIMINAL ACTIVITY WHICH VIOLATES STATE LAW, THE LAWS OF THE STATE OF CALIFORNIA, IS OUTSIDE OF YOUR INQUIRY. IT MAY HAPPEN AND FREQUENTLY DOES HAPPEN THAT SOME OF THE CONDUCT THAT'S UNDER INVESTIGATION BY THE FEDERAL GRAND JURY ALSO VIOLATES STATE LAW. AND THIS IS FINE. THAT'S PROPER. BUT THERE ALWAYS HAS TO BE SOME FEDERAL CONNECTION TO WHAT IS UNDER INVESTIGATION OR YOU HAVE NO JURISDICTION.

THERE'S ALSO A GEOGRAPHIC LIMITATION ON THE SCOPE OF YOUR INQUIRIES AND THE EXERCISE OF YOUR POWERS. YOU MAY INQUIRE ONLY INTO FEDERAL OFFENSES COMMITTED IN OUR FEDERAL DISTRICT, WHICH INCLUDES SAN DIEGO AND IMPERIAL COUNTIES; THAT IS, THE SOUTHERN DISTRICT OF CALIFORNIA.

YOU MAY HAVE CASES THAT IMPLICATE ACTIVITIES IN OTHER AREAS, OTHER DISTRICTS, AND THERE MAY BE SOME EVIDENCE OF CRIMINAL ACTIVITY IN CONJUNCTION WITH WHAT GOES ON HERE THAT'S ALSO HAPPENING ELSEWHERE. THERE ALWAYS HAS TO BE A CONNECTION TO OUR DISTRICT.

THROUGHOUT THE UNITED STATES, WE HAVE 93 DISTRICTS NOW. THE STATES ARE CUT UP LIKE PIECES OF PIE, AND EACH DISTRICT IS SEPARATELY DENOMINATED, AND EACH DISTRICT HAS RESPONSIBILITY FOR THEIR OWN COUNTIES AND GEOGRAPHY. AND YOU, TOO, ARE BOUND BY THAT LIMITATION.

I'VE GONE OVER THIS WITH A COUPLE OF PEOPLE. YOU UNDERSTOOD FROM THE QUESTIONS AND ANSWERS THAT A COUPLE OF PEOPLE WERE EXCUSED, I THINK THREE IN THIS CASE, BECAUSE THEY COULD NOT ADHERE TO THE PRINCIPLE THAT I'M ABOUT TO TELL YOU.

BUT IT'S NOT FOR YOU TO JUDGE THE WISDOM OF THE CRIMINAL LAWS ENACTED BY CONGRESS; THAT IS, WHETHER OR NOT THERE SHOULD BE A FEDERAL LAW OR SHOULD NOT BE A FEDERAL LAW DESIGNATING CERTAIN ACTIVITY IS CRIMINAL IS NOT UP TO YOU. THAT'S A JUDGMENT THAT CONGRESS MAKES.

AND IF YOU DISAGREE WITH THAT JUDGMENT MADE BY

CONGRESS, THEN YOUR OPTION IS NOT TO SAY "WELL, I'M GOING TO VOTE AGAINST INDICTING EVEN THOUGH I THINK THAT THE EVIDENCE IS SUFFICIENT" OR "I'M GOING TO VOTE IN FAVOR OF EVEN THOUGH THE EVIDENCE MAY BE INSUFFICIENT." INSTEAD, YOUR OBLIGATION IS TO CONTACT YOUR CONGRESSMAN OR ADVOCATE FOR A CHANGE IN THE LAWS, BUT NOT TO BRING YOUR PERSONAL DEFINITION OF WHAT THE LAW OUGHT TO BE AND TRY TO IMPOSE THAT THROUGH APPLYING IT IN A GRAND JURY SETTING.

FURTHERMORE, WHEN YOU'RE DECIDING WHETHER TO INDICT OR NOT TO INDICT, YOU SHOULDN'T BE CONCERNED WITH PUNISHMENT THAT ATTACHES TO THE CHARGE. I THINK I ALSO ALLUDED TO THIS IN THE CONVERSATION WITH ONE GENTLEMAN. JUDGES ALONE DETERMINE PUNISHMENT. WE TELL TRIAL JURIES IN CRIMINAL CASES THAT THEY'RE NOT TO BE CONCERNED WITH THE MATTER OF PUNISHMENT EITHER. YOUR OBLIGATION AT THE END OF THE DAY IS TO MAKE A BUSINESS-LIKE DECISION ON FACTS AND APPLY THOSE FACTS TO THE LAW AS IT'S EXPLAINED AND READ TO YOU.

THE CASES WHICH YOU'LL APPEAR WILL COME BEFORE YOU IN VARIOUS WAYS. FREQUENTLY, PEOPLE ARE ARRESTED DURING OR SHORTLY AFTER THE COMMISSION OF AN ALLEGED CRIME. AND THEN THEY'RE TAKEN BEFORE A MAGISTRATE JUDGE, WHO HOLDS A PRELIMINARY HEARING TO DETERMINE WHETHER INITIALLY THERE'S PROBABLE CAUSE TO BELIEVE A PERSON'S COMMITTED A CRIME.

ONCE THE MAGISTRATE JUDGE FINDS PROBABLE CAUSE, HE OR SHE WILL DIRECT THAT THE ACCUSED PERSON BE HELD FOR ACTION

BY THE GRAND JURY. REMEMBER, UNDER OUR SYSTEM AND THE 5TH AMENDMENT, TRIALS OF SERIOUS AND INFAMOUS CRIMES CAN ONLY PROCEED WITH GRAND JURY ACTION. SO THE DETERMINATION OF THE MAGISTRATE JUDGE IS JUST TO HOLD THE PERSON UNTIL THE GRAND JURY CAN ACT. IT TAKES YOUR ACTION AS A GRAND JURY BEFORE THE CASE CAN FORMALLY GO FORWARD. IT'S AT THAT POINT THAT YOU'LL BE CALLED UPON TO CONSIDER WHETHER AN INDICTMENT SHOULD BE RETURNED IN A GIVEN CASE.

OTHER CASES MAY BE BROUGHT TO YOU BY THE UNITED STATES ATTORNEY OR AN ASSISTANT UNITED STATES ATTORNEY BEFORE AN ARREST IS MADE. BUT DURING THE COURSE OF AN INVESTIGATION OR AFTER AN INVESTIGATION HAS BEEN CONDUCTED, THERE'S TWO WAYS THAT CASES GENERALLY ENTER THE CRIMINAL JUSTICE PROCESS: THE REACTIVE OFFENSES WHERE, AS THE NAME IMPLIES, THE POLICE REACT TO A CRIME AND ARREST SOMEBODY. AND THOSE CASES WILL THEN BE SUBMITTED TO YOU AFTER MUCH OF THE FACTS ARE KNOWN. AND THEN THERE'S PROACTIVE CASES, CASES WHERE MAYBE THERE'S A SUSPICION OR A HUNCH OF WRONGDOING. THE FBI MAY BE CALLED UPON TO INVESTIGATE OR SOME OTHER FEDERAL AGENCY, AND THEY MAY NEED THE ASSISTANCE OF THE GRAND JURY IN FACILITATING THAT INVESTIGATION.

THE GRAND JURY HAS BROAD INVESTIGATORY POWERS. YOU HAVE THE POWER TO ISSUE SUBPOENAS, FOR EXAMPLE, FOR RECORDS OR FOR PEOPLE TO APPEAR. SOMETIMES IT HAPPENS THAT PEOPLE SAY "I DON'T HAVE TO TALK TO YOU" TO THE FBI, AND THEY REFUSE TO TALK

TO THE AUTHORITIES. UNDER THOSE CIRCUMSTANCES, ON OCCASION, THE FBI MAY GO TO THE U.S. ATTORNEY AND SAY, "LOOK, YOU NEED TO FIND OUT WHAT HAPPENED HERE. SUMMON THIS PERSON IN FRONT OF THE GRAND JURY." SO IT MAY BE THAT YOU'RE CALLED UPON TO EVALUATE WHETHER A CRIME OCCURRED AND WHETHER THERE OUGHT TO BE AN INDICTMENT. YOU, IN A VERY REAL SENSE, ARE PART OF THE INVESTIGATION.

IT MAY HAPPEN THAT DURING THE COURSE OF AN INVESTIGATION INTO ONE CRIME, IT TURNS OUT THAT THERE IS EVIDENCE OF A DIFFERENT CRIME THAT SURFACES. YOU, AS GRAND JURORS, HAVE A RIGHT TO PURSUE THE NEW CRIME THAT YOU INVESTIGATE, EVEN CALLING NEW WITNESSES AND SEEKING OTHER DOCUMENTS OR PAPERS OR EVIDENCE BE SUBPOENAED.

NOW, IN THAT REGARD, THERE'S A CLOSE ASSOCIATION BETWEEN THE GRAND JURY AND THE U.S. ATTORNEY'S OFFICE AND THE INVESTIGATIVE AGENCIES OF THE FEDERAL GOVERNMENT. UNLIKE THE U.S. ATTORNEY'S OFFICE OR THOSE INVESTIGATIVE AGENCIES, THE GRAND JURY DOESN'T HAVE ANY POWER TO EMPLOY INVESTIGATORS OR TO EXPEND FEDERAL FUNDS FOR INVESTIGATIVE PURPOSES.

INSTEAD, YOU MUST GO BACK TO THE U.S. ATTORNEY AND ASK THAT THOSE THINGS BE DONE. YOU'LL WORK CLOSELY WITH THE U.S. ATTORNEY'S OFFICE IN YOUR INVESTIGATION OF CASES. IF ONE OR MORE GRAND JURORS WANT TO HEAR ADDITIONAL EVIDENCE ON A CASE OR THINK THAT SOME ASPECT OF THE CASE OUGHT TO BE PURSUED, YOU MAY MAKE THAT REQUEST TO THE U.S. ATTORNEY.

IF THE U.S. ATTORNEY REFUSES TO ASSIST YOU OR IF YOU BELIEVE THAT THE U.S. ATTORNEY IS NOT ACTING IMPARTIALLY, THEN YOU CAN TAKE THE MATTER UP WITH ME. I'M THE ASSIGNED JURY JUDGE, AND I WILL BE THE LIAISON WITH THE GRAND JURIES.

YOU CAN USE YOUR POWER TO INVESTIGATE EVEN OVER THE ACTIVE OPPOSITION OF THE UNITED STATES ATTORNEY. IF THE MAJORITY OF YOU ON THE GRAND JURY THINK THAT A SUBJECT OUGHT TO BE PURSUED AND THE U.S. ATTORNEY THINKS NOT, THEN YOUR DECISION TRUMPS, AND YOU HAVE THE RIGHT TO HAVE THAT INVESTIGATION PURSUED IF YOU BELIEVE IT'S NECESSARY TO DO SO IN THE INTEREST OF JUSTICE.

I MENTION THESE THINGS TO YOU AS A THEORETICAL POSSIBILITY. THE TRUTH OF THE MATTER IS IN MY EXPERIENCE HERE IN THE OVER 20 YEARS IN THIS COURT, THAT KIND OF TENSION DOES NOT EXIST ON A REGULAR BASIS, THAT I CAN RECALL, BETWEEN THE U.S. ATTORNEY AND GRAND JURIES. THEY GENERALLY WORK TOGETHER. THE U.S. ATTORNEY IS GENERALLY DEFERENTIAL TO THE GRAND JURY AND WHAT THE GRAND JURY WANTS.

IT'S IMPORTANT TO KEEP IN MIND THAT YOU WILL AND DO HAVE AN INVESTIGATORY FUNCTION AND THAT THAT FUNCTION IS PARAMOUNT TO EVEN WHAT THE U.S. ATTORNEY MAY WANT YOU TO DO.

IF YOU, AS I SAID, BELIEVE THAT AN INVESTIGATION OUGHT TO GO INTO OTHER AREAS BOTH IN TERMS OF SUBJECT MATTER, BEING A FEDERAL CRIME, AND GEOGRAPHICALLY, THEN YOU AS A GROUP CAN MAKE THAT DETERMINATION AND DIRECT THE INVESTIGATION THAT

WAY.

SINCE THE UNITED STATES ATTORNEY HAS THE DUTY OF PROSECUTING PERSONS CHARGED WITH THE COMMISSION OF FEDERAL CRIMES, SHE OR ONE OF HER ASSISTANTS -- BY THE WAY, THE U.S. ATTORNEY IN OUR DISTRICT IS MS. CAROL LAM -- SHE OR ONE OF HER ASSISTANTS WILL PRESENT THE MATTERS WHICH THE GOVERNMENT HAS DESIRES TO HAVE YOU CONSIDER. THE ATTORNEY WILL EDUCATE YOU ON THE LAW THAT APPLIES BY READING THE LAW TO YOU OR POINTING IT OUT, THE LAW THAT THE GOVERNMENT BELIEVES WAS VIOLATED. THE ATTORNEY WILL SUBPOENA FOR TESTIMONY BEFORE YOU SUCH WITNESSES AS THE LAWYER THINKS ARE IMPORTANT AND NECESSARY TO ESTABLISH PROBABLE CAUSE AND ALLOW YOU TO DO YOUR FUNCTION, AND ALSO ANY OTHER WITNESSES THAT YOU MAY REQUEST THE ATTORNEY TO CALL IN RELATION TO THE SUBJECT MATTER UNDER INVESTIGATION.

REMEMBER THAT THE DIFFERENCE BETWEEN THE GRAND JURY FUNCTION AND THAT OF THE TRIAL JURY IS THAT YOU ARE NOT PRESIDING IN A FULL-BLOWN TRIAL. IN MOST OF THE CASES THAT YOU APPEAR, THE LAWYER FOR THE GOVERNMENT IS NOT GOING TO BRING IN EVERYBODY THAT MIGHT BE BROUGHT IN AT THE TIME OF TRIAL; THAT IS, EVERYBODY THAT HAS SOME RELEVANT EVIDENCE TO OFFER. THEY'RE NOT GOING TO BRING IN EVERYONE WHO CONCEIVABLY COULD SAY SOMETHING THAT MIGHT BEAR ON THE OUTCOME. THEY'RE PROBABLY GOING TO BRING IN A LIMITED NUMBER OF WITNESSES JUST TO ESTABLISH PROBABLE CAUSE. OFTENTIMES, THEY PRESENT A SKELETON CASE. IT'S EFFICIENT. IT'S ALL THAT'S NECESSARY.

IT SAVES TIME AND RESOURCES.

WHEN YOU ARE PRESENTED WITH A CASE, IT WILL TAKE 16 OF YOUR NUMBER OUT OF THE 23, 16 MEMBERS OF THE GRAND JURY OUT OF THE 23, TO CONSTITUTE A QUORUM. YOU CAN'T DO BUSINESS UNLESS THERE'S AT LEAST 16 MEMBERS OF THE GRAND JURY PRESENT FOR THE TRANSACTION OF ANY BUSINESS. IF FEWER THAN 16 GRAND JURORS ARE PRESENT EVEN FOR A MOMENT, THEN THE PROCEEDINGS OF THE GRAND JURY MUST STOP. YOU CAN NEVER OPERATE WITHOUT A QUORUM OF AT LEAST 16 MEMBERS PRESENT.

NOW, THE EVIDENCE THAT YOU WILL HEAR NORMALLY WILL CONSIST OF TESTIMONY OF WITNESSES AND WRITTEN DOCUMENTS. YOU MAY GET PHOTOGRAPHS. THE WITNESSES WILL APPEAR IN FRONT OF YOU SEPARATELY. WHEN A WITNESS FIRST APPEARS BEFORE YOU, THE GRAND JURY FOREPERSON WILL ADMINISTER AN OATH. THE PERSON MUST SWEAR OR AFFIRM TO TELL THE TRUTH. AND AFTER THAT'S BEEN ACCOMPLISHED, THE WITNESS WILL BE QUESTIONED.

ORDINARILY, THE U.S. ATTORNEY PRESIDING AT THE -- REPRESENTING THE U.S. GOVERNMENT AT THE GRAND JURY SESSION WILL ASK THE QUESTIONS FIRST. THEN THE FOREPERSON OF THE GRAND JURY MAY ASK QUESTIONS, AND OTHER MEMBERS OF THE GRAND JURY MAY ASK QUESTIONS, ALSO.

I USED TO APPEAR IN FRONT OF THE GRAND JURY. I'LL TELL YOU WHAT I WOULD DO IS FREQUENTLY I'D ASK THE QUESTIONS, AND THEN I'D SEND THE WITNESS OUT AND ASK THE GRAND JURORS IF THERE WERE ANY QUESTIONS THEY WANTED ME TO ASK. AND THE

REASON I DID THAT IS THAT I HAD THE LEGAL TRAINING TO KNOW WHAT WAS RELEVANT AND WHAT MIGHT BE PREJUDICIAL TO THE DETERMINATION OF WHETHER THERE WAS PROBABLE CAUSE.

A LOT OF TIMES PEOPLE WILL SAY, "WELL, HAS THIS PERSON EVER DONE IT BEFORE?" AND WHILE THAT MAY BE A RELEVANT QUESTION, ON THE ISSUE OF PROBABLE CAUSE, IT HAS TO BE ASSESSED ON A CASE-BY-CASE BASIS. IN OTHER WORDS, THE EVIDENCE OF THIS OCCASION OF CRIME THAT'S ALLEGED MUST BE ADEQUATE WITHOUT REGARD TO WHAT THE PERSON HAS DONE IN THE PAST. I WOULDN'T WANT THAT QUESTION ANSWERED UNTIL AFTER THE GRAND JURY HAD MADE A DETERMINATION OF WHETHER THERE WAS ENOUGH EVIDENCE.

SO WHEN I APPEARED IN FRONT OF THE GRAND JURY, I'D TELL THEM "YOU'LL GET YOUR QUESTION ANSWERED, BUT I'D LIKE YOU TO VOTE ON THE INDICTMENT FIRST. I'D LIKE YOU TO DETERMINE WHETHER THERE'S ENOUGH EVIDENCE BASED ON WHAT'S BEEN PRESENTED, AND THEN WE'LL ANSWER IT." I DIDN'T WANT TO PREJUDICE THE GRAND JURY. THERE MAY BE SIMILAR CONCERNS THAT COME UP. NOW, THE PRACTICES VARY AMONG THE ASSISTANT U.S. ATTORNEYS THAT WILL APPEAR IN FRONT OF YOU.

ON OTHER OCCASIONS WHEN I DIDN'T THINK THERE WAS ANY RISK THAT MIGHT PREJUDICE THE PROCESS, I WOULD ALLOW THE GRAND JURY TO FOLLOW UP THEMSELVES AND ASK QUESTIONS. A LOT OF TIMES, THE FOLLOW-UPS ARE FACTUAL ON DETAILED MATTERS. THAT PRACTICE WILL VARY DEPENDING ON WHO IS REPRESENTING THE UNITED

STATES AND PRESENTING THE CASE TO YOU. THE POINT IS YOU HAVE THE RIGHT TO ASK ADDITIONAL QUESTIONS OR TO ASK THAT THOSE QUESTIONS BE PUT TO THE WITNESS.

IN THE EVENT A WITNESS DOESN'T SPEAK OR UNDERSTAND ENGLISH, THEN ANOTHER PERSON WILL BE BROUGHT INTO THE ROOM. OBVIOUSLY, THAT WOULD BE AN INTERPRETER TO ALLOW YOU TO UNDERSTAND THE ANSWERS. WHEN WITNESSES DO APPEAR IN FRONT OF THE GRAND JURY, THEY SHOULD BE TREATED COURTEOUSLY. QUESTIONS SHOULD BE PUT TO THEM IN AN ORDERLY FASHION. THE QUESTIONS SHOULD NOT BE HOSTILE.

IF YOU HAVE ANY DOUBT WHETHER IT'S PROPER TO ASK A PARTICULAR QUESTION, THEN YOU CAN ASK THE U.S. ATTORNEY WHO'S ASSISTING IN THE INVESTIGATION FOR ADVICE ON THE MATTER. YOU ALONE AS GRAND JURORS DECIDE HOW MANY WITNESSES YOU WANT TO HEAR. WITNESSES CAN BE SUBPOENAED FROM ANYWHERE IN THE COUNTRY. YOU HAVE NATIONAL JURISDICTION.

HOWEVER, PERSONS SHOULD NOT ORDINARILY BE SUBJECTED TO DISRUPTION OF THEIR DAILY LIVES UNLESS THERE'S GOOD REASON. THEY SHOULDN'T BE HARASSED OR ANNOYED OR INCONVENIENCED. THAT'S NOT THE PURPOSE OF THE GRAND JURY HEARING, NOR SHOULD PUBLIC FUNDS BE EXPENDED TO BRING WITNESSES UNLESS YOU BELIEVE THAT THE WITNESSES CAN PROVIDE MEANINGFUL, RELEVANT EVIDENCE WHICH WILL ASSIST IN YOUR DETERMINATIONS AND YOUR INVESTIGATION.

ALL WITNESSES WHO ARE CALLED IN FRONT OF THE GRAND

JURY HAVE CERTAIN RIGHTS. THESE INCLUDE, AMONG OTHERS, THE RIGHT TO REFUSE TO ANSWER QUESTIONS ON THE GROUNDS THAT THE ANSWER TO A QUESTION MIGHT INCRIMINATE THEM AND THE RIGHT TO KNOW THAT ANYTHING THEY SAY MIGHT BE USED AGAINST THEM.

THE U.S. ATTORNEYS ARE CHARGED WITH THE OBLIGATION, WHEN THEY'RE AWARE OF IT, OF ADVISING PEOPLE OF THIS RIGHT BEFORE THEY QUESTION THEM. BUT BEAR THAT IN MIND.

IF A WITNESS DOES EXERCISE THE RIGHT AGAINST SELF-INCRIMINATION, THEN THE GRAND JURY SHOULD NOT HOLD THAT AS ANY PREJUDICE OR BIAS AGAINST THAT WITNESS. IT CAN PLAY NO PART IN THE RETURN OF AN INDICTMENT AGAINST THE WITNESS. IN OTHER WORDS, THE MERE EXERCISE OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, WHICH ALL OF US HAVE AS UNITED STATES RESIDENTS, SHOULD NOT FACTOR INTO YOUR DETERMINATION OF WHETHER THERE'S PROBABLE CAUSE TO GO FORWARD IN THIS CASE. YOU MUST RESPECT THAT DETERMINATION BY THE PERSON AND NOT USE IT AGAINST THEM.

IT'S AN UNCOMMON SITUATION THAT YOU'LL FACE WHEN SOMEBODY DOES CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION. THAT'S BECAUSE USUALLY AT THE TIME A PERSON IS SUBPOENAED, IF THERE'S A PROSPECT THAT THEY'RE GOING TO CLAIM THE PRIVILEGE, THE U.S. ATTORNEY IS PUT ON NOTICE OF THAT BEFOREHAND EITHER BY THE PERSON HIMSELF OR HERSELF OR MAYBE A LAWYER REPRESENTING THE PERSON.

IN MY EXPERIENCE, MOST OF THE TIME THE U.S. ATTORNEY

WILL NOT THEN CALL THE PERSON IN FRONT OF YOU BECAUSE IT WOULD BE TO NO EFFECT TO CALL THEM AND HAVE THEM ASSERT THEIR 5TH AMENDMENT PRIVILEGE. BUT IT SOMETIMES DOES COME UP. IT SOMETIMES HAPPENS. SOMETIMES THERE'S A QUESTION OF WHETHER THE PERSON HAS A BONA FIDE PRIVILEGE AGAINST SELF-INCRIMINATION. THAT'S A MATTER FOR THE COURT TO DETERMINE IN ANCILLARY PROCEEDINGS. OR THE U.S. ATTORNEY MAY BE UNAWARE OF A PERSON'S INCLINATION TO ASSERT THE 5TH. SO IT MAY COME UP IN FRONT OF YOU. IT DOESN'T ALWAYS COME UP.

AS I MENTIONED TO YOU IN MY PRELIMINARY REMARKS, WITNESSES ARE NOT PERMITTED TO HAVE A LAWYER WITH THEM IN THE GRAND JURY ROOM. THE LAW DOESN'T PERMIT A WITNESS SUMMONED BEFORE THE GRAND JURY TO BRING THE LAWYER WITH THEM, ALTHOUGH WITNESSES DO HAVE A RIGHT TO CONFER WITH THEIR LAWYERS DURING THE COURSE OF GRAND JURY INVESTIGATION PROVIDED THE CONFERENCE OCCURS OUTSIDE THE GRAND JURY ROOM.

YOU MAY FACE A SITUATION WHERE A WITNESS SAYS "I'D LIKE TO TALK TO MY LAWYER BEFORE I ANSWER THAT QUESTION," IN WHICH CASE THE PERSON WOULD LEAVE THE ROOM, CONSULT WITH THE LAWYER, AND THEN COME BACK INTO THE ROOM WHERE FURTHER ACTION WOULD TAKE PLACE.

APPEARANCES BEFORE A GRAND JURY SOMETIMES PRESENT COMPLEX LEGAL PROBLEMS THAT REQUIRE THE ASSISTANCE OF LAWYERS. YOU'RE NOT TO DRAW ANY ADVERSE INFERENCE IF A WITNESS DOES ASK TO LEAVE THE ROOM TO SPEAK TO HIS LAWYER OR HER LAWYER AND

THEN LEAVES FOR THAT PURPOSE.

ORDINARILY, NEITHER THE ACCUSED OR ANY WITNESS ON THE ACCUSED'S BEHALF WILL TESTIFY IN THE GRAND JURY SESSION. BUT UPON THE REQUEST OF AN ACCUSED, PREFERABLY IN WRITING, YOU MAY AFFORD THE ACCUSED AN OPPORTUNITY TO APPEAR IN FRONT OF YOU.

AS I'VE SAID, THESE PROCEEDINGS TEND TO BE ONE-SIDED NECESSARILY. THE PROSECUTOR IS ASKING YOU TO RETURN AN INDICTMENT TO A CRIMINAL CHARGE, AND THEY'LL MUSTER THE EVIDENCE THAT THEY HAVE THAT THEY BELIEVE SUPPORTS PROBABLE CAUSE AND PRESENT THAT TO YOU. BECAUSE IT'S NOT A FULL-BLOWN TRIAL, YOU'RE LIKELY IN MOST CASES NOT TO HEAR THE OTHER SIDE OF THE STORY, IF THERE IS ANOTHER SIDE TO THE STORY. THERE'S NO PROVISION OF LAW THAT ALLOWS AN ACCUSED, FOR EXAMPLE, TO CONTEST THE MATTER IN FRONT OF THE GRAND JURY.

IT MAY HAPPEN, AS I SAID, THAT AN ACCUSED MAY ASK TO APPEAR IN FRONT OF YOU. BECAUSE THE APPEARANCE OF SOMEONE ACCUSED OF A CRIME MAY RAISE COMPLICATED LEGAL PROBLEMS, YOU SHOULD SEEK THE U.S. ATTORNEY'S ADVICE AND COUNSEL, IF NECESSARY, AND THAT OF THE COURT BEFORE ALLOWING THAT.

BEFORE ANY ACCUSED PERSON IS ALLOWED TO TESTIFY, THEY MUST BE ADVISED OF THEIR RIGHTS, AND YOU SHOULD BE COMPLETELY SATISFIED THAT THEY UNDERSTAND WHAT THEY'RE DOING.

YOU'RE NOT REQUIRED TO SUMMON WITNESSES WHICH AN ACCUSED PERSON MAY WANT YOU TO HAVE EXAMINED UNLESS PROBABLE

CAUSE FOR AN INDICTMENT MAY BE EXPLAINED AWAY BY THE TESTIMONY OF THOSE WITNESSES.

NOW, AGAIN, THIS EMPHASIZES THE DIFFERENCE BETWEEN THE FUNCTION OF THE GRAND JURY AND THE TRIAL JURY. YOU'RE ALL ABOUT PROBABLE CAUSE. IF YOU THINK THAT THERE'S EVIDENCE OUT THERE THAT MIGHT CAUSE YOU TO SAY "WELL, I DON'T THINK PROBABLE CAUSE EXISTS," THEN IT'S INCUMBENT UPON YOU TO HEAR THAT EVIDENCE AS WELL. AS I TOLD YOU, IN MOST INSTANCES, THE U.S. ATTORNEYS ARE DUTY-BOUND TO PRESENT EVIDENCE THAT CUTS AGAINST WHAT THEY MAY BE ASKING YOU TO DO IF THEY'RE AWARE OF THAT EVIDENCE.

THE DETERMINATION OF WHETHER A WITNESS IS TELLING THE TRUTH IS SOMETHING FOR YOU TO DECIDE. NEITHER THE COURT NOR THE PROSECUTORS NOR ANY OFFICERS OF THE COURT MAY MAKE THAT DETERMINATION FOR YOU. IT'S THE EXCLUSIVE PROVINCE OF GRAND JURORS TO DETERMINE WHO IS CREDIBLE AND WHO MAY NOT BE.

FINALLY, LET ME TELL YOU THIS: THERE'S ANOTHER DIFFERENCE BETWEEN OUR GRAND JURY PROCEDURE HERE AND PROCEDURES YOU MAY BE FAMILIAR WITH HAVING SERVED ON STATE TRIAL JURIES OR FEDERAL TRIAL JURIES OR EVEN ON THE STATE GRAND JURY; HEARSAY TESTIMONY, THAT IS, TESTIMONY AS TO FACTS NOT PERSONALLY KNOWN BY THE WITNESS, BUT WHICH THE WITNESS HAS BEEN TOLD OR RELATED BY OTHER PERSONS MAY BE DEEMED BY YOU PERSUASIVE AND MAY PROVIDE A BASIS FOR RETURNING AN INDICTMENT AGAINST AN ACCUSED.

WHAT I MEAN BY THAT IS IF IT'S A FULL-BLOWN TRIAL WHERE THE RULES OF EVIDENCE APPLY -- AND ALL OF US ARE FAMILIAR WITH THIS TERM "HEARSAY EVIDENCE." GENERALLY, IT FORBIDS SOMEBODY FROM REPEATING WHAT SOMEONE ELSE TOLD THEM OUTSIDE OF COURT. OH, THERE'S A MILLION EXCEPTIONS TO THE HEARSAY RULE, BUT THAT'S THE GIST OF THE RULE.

USUALLY, WE INSIST ON THE SPEAKER OF THE WORDS TO COME IN SO THAT WE CAN KNOW THE CONTEXT OF IT. THAT RULE DOESN'T APPLY IN THE GRAND JURY CONTEXT. BECAUSE IT'S A PRELIMINARY PROCEEDING, BECAUSE ULTIMATELY GUILT OR INNOCENCE IS NOT BEING DETERMINED, THE EVIDENTIARY STANDARDS ARE RELAXED. THE PROSECUTORS ARE ENTITLED TO PUT ON HEARSAY EVIDENCE.

HOW DOES THAT PLAY OUT IN REAL LIFE? WELL, YOU'RE GOING TO BE HEARING A LOT OF BORDER TYPE CASES. IT DOESN'T MAKE SENSE, IT'S NOT EFFICIENT, IT'S NOT COST-EFFECTIVE TO PULL ALL OF OUR BORDER GUARDS OFF THE BORDER TO COME UP AND TESTIFY. WHO IS LEFT GUARDING THE BORDER, THEN?

WHAT THEY'VE DONE IN THE BORDER CASES IN PARTICULAR IF THEY USUALLY HAVE A SUMMARY WITNESS; A WITNESS FROM, FOR EXAMPLE, BORDER PATROL OR CUSTOMS WHO WILL TALK TO THE PEOPLE OR READ THE REPORTS OF THE PEOPLE WHO ACTUALLY MADE THE ARREST. THAT PERSON WILL COME IN AND TESTIFY ABOUT WHAT HAPPENED. THE PERSON WON'T HAVE FIRST-HAND KNOWLEDGE, BUT THEY'LL BE RELIABLY INFORMED BY THE PERSON WITH FIRST-HAND

KNOWLEDGE OF WHAT OCCURRED, AND THEY'LL BE THE WITNESS BEFORE THE GRAND JURY.

YOU SHOULD EXPECT AND COUNT ON THE FACT THAT YOU'RE GOING TO HEAR EVIDENCE IN THE FORM OF HEARSAY THAT WOULD NOT BE ADMISSIBLE IF THE CASE GOES FORWARD TO TRIAL, BUT IS ADMISSIBLE AT THE GRAND JURY STAGE.

AFTER YOU'VE HEARD ALL OF THE EVIDENCE THAT THE U.S. ATTORNEY INTENDS TO PRESENT OR THAT YOU WANT TO HEAR IN A PARTICULAR MATTER, YOU'RE THEN CHARGED WITH THE OBLIGATION OF DELIBERATING TO DETERMINE WHETHER THE ACCUSED PERSON OUGHT TO BE INDICTED. NO ONE OTHER THAN YOUR OWN MEMBERS, THE MEMBERS OF THE GRAND JURY, IS TO BE PRESENT IN THE GRAND JURY ROOM WHILE YOU'RE DELIBERATING.

WHAT THAT MEANS IS THE COURT REPORTER, THE ASSISTANT U.S. ATTORNEY, ANYONE ELSE, THE INTERPRETER WHO MAY HAVE BEEN PRESENT TO INTERPRET FOR A WITNESS, MUST GO OUT OF THE ROOM, AND THE PROCEEDING MUST GO FORWARD WITH ONLY GRAND JURORS PRESENT DURING THE DELIBERATION AND VOTING ON AN INDICTMENT.

YOU HEARD ME EXPLAIN EARLIER THAT AT VARIOUS TIMES DURING THE PRESENTATION OF MATTERS BEFORE YOU, OTHER PEOPLE MAY BE PRESENT IN THE GRAND JURY. THIS IS PERFECTLY ACCEPTABLE. THE RULE THAT I HAVE JUST READ TO YOU ABOUT YOUR PRESENCE ALONE IN THE GRAND JURY ROOM APPLIES ONLY DURING DELIBERATION AND VOTING ON INDICTMENTS.

TO RETURN AN INDICTMENT CHARGING SOMEONE WITH AN

OFFENSE, IT'S NOT NECESSARY, AS I MENTIONED MANY TIMES, THAT YOU FIND PROOF BEYOND A REASONABLE DOUBT. THAT'S THE TRIAL STANDARD, NOT THE GRAND JURY STANDARD. YOUR TASK IS TO DETERMINE WHETHER THE GOVERNMENT'S EVIDENCE, AS PRESENTED TO YOU, IS SUFFICIENT TO CONCLUDE THAT THERE'S PROBABLE CAUSE TO BELIEVE THAT THE ACCUSED IS GUILTY OF THE PROPOSED OR CHARGED OFFENSE.

I EXPLAINED TO YOU WHAT THAT STANDARD MEANS. LET ME, AT THE RISK OF BORING YOU, TELL YOU ONE MORE TIME.

PROBABLE CAUSE MEANS THAT YOU HAVE AN HONESTLY HELD CONSCIENTIOUS BELIEF AND THAT THE BELIEF IS REASONABLE THAT A FEDERAL CRIME WAS COMMITTED AND THAT THE PERSON TO BE INDICTED WAS SOMEHOW ASSOCIATED WITH THE COMMISSION OF THAT CRIME. EITHER THEY COMMITTED IT THEMSELVES OR THEY HELPED SOMEONE COMMIT IT OR THEY WERE PART OF A CONSPIRACY, AN ILLEGAL AGREEMENT, TO COMMIT THAT CRIME.

TO PUT IT ANOTHER WAY, YOU SHOULD VOTE TO INDICT WHEN THE EVIDENCE PRESENTED TO YOU IS SUFFICIENTLY STRONG TO WARRANT A REASONABLE PERSON TO BELIEVE THAT THE ACCUSED IS PROBABLY GUILTY OF THE OFFENSE WHICH IS PROPOSED.

EACH GRAND JUROR HAS THE RIGHT TO EXPRESS VIEWS ON THE MATTER UNDER CONSIDERATION. AND ONLY AFTER ALL GRAND JURORS HAVE BEEN GIVEN A FULL OPPORTUNITY TO BE HEARD SHOULD YOU VOTE ON THE MATTER BEFORE YOU. YOU MAY DECIDE AFTER DELIBERATION AMONG YOURSELVES THAT YOU NEED MORE EVIDENCE, THAT MORE EVIDENCE SHOULD BE CONSIDERED BEFORE A VOTE IS TAKEN. IN SUCH CASES, THE U.S ATTORNEY OR THE ASSISTANT U.S. ATTORNEY CAN BE DIRECTED TO SUBPOENA ADDITIONAL DOCUMENTS OR WITNESSES FOR YOU TO CONSIDER IN ORDER TO MAKE YOUR DETERMINATION.

WHEN YOU'VE DECIDED TO VOTE, THE FOREPERSON SHOULD KEEP A RECORD OF THE VOTE. THAT RECORD SHOULD BE FILED WITH THE CLERK OF THE COURT. THE RECORD DOESN'T INCLUDE THE NAMES OF THE JURORS OR HOW THEY VOTED, BUT ONLY THE NUMBER OF VOTES FOR THE INDICTMENT. SO IT'S AN ANONYMOUS VOTE. YOU'LL KNOW AMONG YOURSELVES WHO VOTED WHICH WAY, BUT THAT INFORMATION DOES NOT GET CAPTURED OR RECORDED, JUST THE NUMBER OF PEOPLE VOTING FOR INDICTMENT.

IF 12 OR MORE MEMBERS OF THE GRAND JURY AFTER DELIBERATION BELIEVE THAT AN INDICTMENT IS WARRANTED, THEN YOU'LL REQUEST THE UNITED STATES ATTORNEY TO PREPARE A FORMAL WRITTEN INDICTMENT IF ONE'S NOT ALREADY BEEN PREPARED AND PRESENTED TO YOU. IN MY EXPERIENCE, MOST OF THE TIME THE U.S. ATTORNEY WILL SHOW UP WITH THE WITNESSES AND WILL HAVE THE PROPOSED INDICTMENT WITH THEM. SO YOU'LL HAVE THAT TO CONSIDER. YOU'LL KNOW EXACTLY WHAT THE PROPOSED CHARGES ARE.

THE INDICTMENT WILL SET FORTH THE DATE AND THE PLACE OF THE ALLEGED OFFENSE AND THE CIRCUMSTANCES THAT THE U.S. ATTORNEY BELIEVES MAKES THE CONDUCT CRIMINAL. IT WILL IDENTIFY THE CRIMINAL STATUTES THAT HAVE ALLEGEDLY BEEN

VIOLATED.

THE FOREPERSON, UPON THE GRAND JURY VOTING TO RETURN THE INDICTMENT, WILL THEN ENDORSE OR SIGN THE INDICTMENT, WHAT'S CALLED A TRUE BILL OF INDICTMENT. THERE'S A SPACE PROVIDED BY THE WORD -- OR FOLLOWED BY THE WORD "FOREPERSON." THE FOREPERSON IS TO SIGN THE INDICTMENT IF THE GRAND JURY BELIEVES THAT THERE'S PROBABLE CAUSE. A TRUE BILL SIGNIFIES THAT 12 OR MORE GRAND JURORS HAVE AGREED THAT THE CASE OUGHT TO GO FORWARD WITH PROBABLE CAUSE TO BELIEVE THAT THE PERSON PROPOSED FOR THE CHARGE IS GUILTY OF THE CRIME.

IT'S THE DUTY OF THE FOREPERSON TO ENDORSE OR SIGN EVERY INDICTMENT VOTED ON BY AT LEAST 12 MEMBERS EVEN IF THE FOREPERSON HAS VOTED AGAINST RETURNING THE INDICTMENT. SO IF YOU'VE BEEN DESIGNATED A FOREPERSON OR AN ASSISTANT FOREPERSON, EVEN IF YOU VOTED THE OTHER WAY OR YOU'RE OUT-VOTED, IF THERE'S AT LEAST 12 WHO VOTED FOR THE INDICTMENT, THEN YOU MUST SIGN THE INDICTMENT.

IF YOU WERE THE 12 MEMBERS OF THE GRAND JURY WHO VOTED IN FAVOR OF THE INDICTMENT, THEN THE FOREPERSON WILL ENDORSE THE INDICTMENT WITH THESE WORDS: "NOT A TRUE BILL." THEY'LL RETURN IT TO THE COURT. THE COURT WILL IMPOUND IT.

THE INDICTMENTS WHICH HAVE BEEN ENDORSED AS A TRUE BILL ARE PRESENTED EITHER TO ONE OF OUR MAGISTRATE JUDGES OR TO A DISTRICT JUDGE IN OPEN COURT BY YOUR FOREPERSON AT THE CONCLUSION OF EACH SESSION OF THE GRAND JURY. THIS IS THE

PROCEDURE THAT YOU HEARD ME ALLUDE TO. IN THE ABSENCE OF THE FOREPERSON, THE DEPUTY FOREPERSON SHALL PERFORM ALL THE FUNCTIONS AND DUTIES OF THE FOREPERSON.

LET ME EMPHASIZE AGAIN IT'S EXTREMELY IMPORTANT FOR THOSE OF YOU WHO ARE GRAND JURORS TO REALIZE THAT UNDER OUR CONSTITUTION, THE GRAND JURY IS AN INDEPENDENT BODY. IT'S INDEPENDENT OF THE UNITED STATES ATTORNEY. IT'S NOT AN ARM OR AN AGENT OF FEDERAL BUREAU OF INVESTIGATION OF THE DRUG ENFORCEMENT ADMINISTRATION, THE IRS, OR ANY OTHER GOVERNMENT AGENCY CHARGED WITH PROSECUTING THE CRIME.

I USED THE CHARACTERIZATION EARLIER THAT YOU STAND AS A BUFFER BETWEEN OUR GOVERNMENT'S ABILITY TO ACCUSE SOMEONE OF A CRIME AND THEN PUTTING THAT PERSON THROUGH THE BURDEN OF STANDING TRIAL. YOU ACT AS AN INDEPENDENT BODY OF CITIZENS.

IN RECENT YEARS, THERE HAS BEEN CRITICISM OF THE INSTITUTION OF THE GRAND JURY. THE CRITICISM GENERALLY IS THE GRAND JURY ACTS AS RUBBER STAMPS AND APPROVES PROSECUTIONS THAT ARE BROUGHT BY THE GOVERNMENT WITHOUT THOUGHT.

INTERESTINGLY ENOUGH, IN MY DISCUSSION WITH PROSPECTIVE GRAND JURORS, WE HAD ONE FELLOW WHO SAID, "YEAH, THAT'S THE WAY I THINK IT OUGHT TO BE." WELL, THAT'S NOT THE WAY IT IS. AS A PRACTICAL MATTER, YOU WILL WORK CLOSELY WITH GOVERNMENT LAWYERS. THE U.S. ATTORNEY AND THE ASSISTANT U.S. ATTORNEYS WILL PROVIDE YOU WITH IMPORTANT SERVICES AND HELP YOU FIND YOUR WAY WHEN YOU'RE CONFRONTED WITH COMPLEX LEGAL

MATTERS. IT'S ENTIRELY PROPER THAT YOU SHOULD RECEIVE THE ASSISTANCE FROM THE GOVERNMENT LAWYERS.

BUT AT THE END OF THE DAY, THE DECISION ABOUT WHETHER A CASE GOES FORWARD AND AN INDICTMENT SHOULD BE RETURNED IS YOURS AND YOURS ALONE. IF PAST EXPERIENCE IS ANY INDICATION OF WHAT TO EXPECT IN THE FUTURE, THEN YOU CAN EXPECT THAT THE U.S. ATTORNEYS THAT WILL APPEAR IN FRONT OF YOU WILL BE CANDID, THEY'LL BE HONEST, THAT THEY'LL ACT IN GOOD FAITH IN ALL MATTERS PRESENTED TO YOU.

HOWEVER, AS I SAID, ULTIMATELY YOU HAVE TO DEPEND ON YOUR INDEPENDENT JUDGMENT IN MAKING THE DECISION THAT YOU ARE CHARGED WITH MAKING AS GRAND JURORS. YOU'RE NOT AN ARM OF THE U.S. ATTORNEY'S OFFICE. YOU'RE NOT AN ARM OF ANY GOVERNMENT AGENCY. THE GOVERNMENT'S LAWYERS ARE PROSECUTORS, AND YOU'RE NOT.

IF THE FACTS SUGGEST TO YOU THAT YOU SHOULD NOT INDICT, THEN YOU SHOULD NOT DO SO EVEN IN THE FACE OF OPPOSITION OR STATEMENTS OR ARGUMENTS FROM ONE OF THE ASSISTANT UNITED STATES ATTORNEYS. YOU SHOULD NOT SURRENDER AN HONESTLY OR CONSCIOUSLY HELD BELIEF WITHOUT THE WEIGHT OF THE EVIDENCE AND SIMPLY DEFER TO THE U.S. ATTORNEY. THAT'S YOUR DECISION TO MAKE.

JUST AS YOU MUST MAINTAIN YOUR INDEPENDENCE IN YOUR DEALINGS WITH GOVERNMENT LAWYERS, YOUR DEALINGS WITH THE COURT MUST BE ON A FORMAL BASIS, ALSO. IF YOU HAVE A QUESTION FOR

THE COURT OR A DESIRE TO MAKE A PRESENTMENT OR A RETURN OF AN INDICTMENT TO THE COURT, THEN YOU MAY CONTACT ME THROUGH MY CLERK. YOU'LL BE ABLE TO ASSEMBLE IN THE COURTROOM OFTENTIMES FOR THESE PURPOSES.

LET ME TELL YOU ALSO THAT EACH GRAND JUROR IS DIRECTED TO REPORT IMMEDIATELY TO THE COURT ANY ATTEMPT BY ANYBODY UNDER ANY PRETENSE WHATSOEVER TO ADDRESS YOU OR CONTACT YOU FOR THE PURPOSE OF TRYING TO GAIN INFORMATION ABOUT WHAT'S GOING ON IN FRONT OF THE GRAND JURY. THAT SHOULD NOT HAPPEN. IF IT DOES HAPPEN, I SHOULD BE INFORMED OF THAT IMMEDIATELY BY ANY OF YOU, COLLECTIVELY OR INDIVIDUALLY. IF ANY PERSON CONTACTS YOU OR ATTEMPTS TO INFLUENCE YOU IN ANY MANNER IN CARRYING OUT YOUR DUTIES AS A GRAND JUROR, LET ME KNOW ABOUT IT.

LET ME TALK A LITTLE BIT MORE ABOUT THE OBLIGATION OF SECRECY, WHICH I'VE MENTIONED AND ALLUDED TO. AS I TOLD YOU BEFORE, THE HALLMARK OF THE GRAND JURY, PARTICULARLY OUR FEDERAL GRAND JURY, IS THAT IT OPERATES SECRETLY. IT OPERATES IN SECRECY, AND ITS PROCEEDINGS ARE ENTIRELY SECRET.

YOUR PROCEEDINGS AS GRAND JURORS ARE ALWAYS SECRET, AND THEY MUST REMAIN SECRET PERMANENTLY UNLESS AND UNTIL THE COURT DETERMINES OTHERWISE. YOU CAN'T RELATE TO YOUR FAMILY, THE NEWS MEDIA, TELEVISION REPORTERS, OR TO ANYONE WHAT HAPPENED IN FRONT OF THE GRAND JURY. IN FACT, TO DO SO IS TO COMMIT A CRIMINAL OFFENSE. YOU COULD BE HELD CRIMINALLY

LIABLE FOR REVEALING WHAT OCCURRED IN FRONT OF THE GRAND JURY.

THERE ARE SEVERAL IMPORTANT REASONS WHY WE DEMAND SECRECY IN THE INSTITUTION OF THE GRAND JURY. FIRST -- AND I MENTIONED THIS, AND THIS IS OBVIOUS -- THE PREMATURE DISCLOSURE OF INFORMATION THAT THE GRAND JURY IS ACTING ON COULD VERY WELL FRUSTRATE THE ENDS OF JUSTICE IN PARTICULAR CASES. IT MIGHT GIVE AN OPPORTUNITY FOR SOMEONE WHO'S ACCUSED OF A CRIME TO ESCAPE OR BECOME A FUGITIVE OR TO DESTROY EVIDENCE THAT MIGHT OTHERWISE BE UNCOVERED LATER ON. YOU DON'T WANT TO DO THAT.

IN THE COURSE OF AN INVESTIGATION, IT'S ABSOLUTELY IMPERATIVE THAT THE INVESTIGATION AND THE FACTS OF THE INVESTIGATION REMAIN SECRET, AND YOU SHOULD KEEP THAT FOREMOST IN YOUR MIND. ALSO, IF THE TESTIMONY OF A WITNESS IS DISCLOSED, THE WITNESS MAY BE SUBJECT TO INTIMIDATION OR SOMETIMES RETALIATION OR BODILY INJURY BEFORE THE WITNESS IS ABLE TO TESTIFY. IT IS SOMETHING THAT THE LAW ENFORCEMENT -- IT'S SOMETIMES THE CASE THAT LAW ENFORCEMENT WILL TELL A WITNESS WHO IS COOPERATING WITH AN INVESTIGATION THAT THEIR SECRECY IS GUARANTEED. IT SOMETIMES TAKES THAT KIND OF ASSURANCE FROM THE POLICE OR LAW ENFORCEMENT AGENTS TO GET A WITNESS TO TELL WHAT THEY KNOW. AND THAT GUARANTEE CAN ONLY BE SECURED IF YOU MAINTAIN THE OBLIGATION OF SECRECY.

THE GRAND JURY IS FORBIDDEN BY LAW FROM DISCLOSING ANY INFORMATION ABOUT THE GRAND JURY PROCESS WHATSOEVER. IT'S

ON THE BASIS SOMETIMES OF REPRESENTATIONS LIKE THAT RELUCTANT WITNESSES DO COME FORWARD. AGAIN, IT UNDERSCORES THE IMPORTANCE OF SECRECY.

AS I'VE ALSO MENTIONED, THE REQUIREMENT OF SECRECY PROTECTS INNOCENT PEOPLE WHO MAY HAVE COME UNDER INVESTIGATION, BUT WHO ARE CLEARED BY THE ACTIONS OF THE GRAND JURY. IT'S A TERRIBLE THING TO BE IMPROPERLY ACCUSED OF A CRIME. IT'S LIKE A SCARLET LETTER THAT PEOPLE SOMETIMES WEAR FOREVER. IT'S WORSE IF THE CRIME OR THE ACCUSATION NEVER BECOMES FORMAL. JUST THE IDEA THAT SOMEONE IS UNDER INVESTIGATION CAN HAVE DISASTROUS CONSEQUENCES FOR THAT PERSON OR HIS OR HER BUSINESS OR HIS OR HER FAMILY. THIS IS ANOTHER IMPORTANT REASON WHY THE GRAND JURY PROCEEDINGS MUST REMAIN SECRET.

IN THE EYES OF SOME PEOPLE, INVESTIGATION BY THE GRAND JURY ALONE CARRIES WITH IT THE STIGMA OR SUGGESTION OF GUILT. SO GREAT INJURY CAN BE DONE TO A PERSON'S GOOD NAME EVEN THOUGH ULTIMATELY YOU DECIDE THAT THERE'S NO EVIDENCE SUPPORTING AN INDICTMENT OF THE PERSON.

TO ENSURE THE SECRECY OF THE GRAND JURY PROCEEDINGS, THE LAW PROVIDES THAT ONLY AUTHORIZED PEOPLE MAY BE IN THE GRAND JURY ROOM WHILE EVIDENCE IS BEING PRESENTED. AS I'VE MENTIONED TO YOU NOW SEVERAL TIMES, THE ONLY PEOPLE WHO MAY BE PRESENT DURING THE FUNCTIONING OF THE GRAND JURY ARE THE GRAND JURORS THEMSELVES, THE UNITED STATES ATTORNEY OR AN ASSISTANT

WHO'S PRESENTING THE CASE, A WITNESS WHO IS THEN UNDER EXAMINATION, A COURT REPORTER, AND AN INTERPRETER, IF NECESSARY. ALL THE OTHERS EXCEPT THE GRAND JURORS GO OUT DURING THE DELIBERATION AND VOTING.

YOU MAY DISCLOSE TO THE U.S. ATTORNEY WHO IS ASSISTING THE GRAND JURY CERTAIN INFORMATION. AS I SAID, IF YOU HAVE QUESTIONS, IF GRAND JURORS HAVE QUESTIONS THAT THEY WANT ANSWERED, OBVIOUSLY THAT INFORMATION IS TO BE CONVEYED TO THE U.S. ATTORNEY TO GET THE QUESTIONS ANSWERED.

BUT YOU SHOULD NOT DISCLOSE THE CONTEXT OF YOUR DELIBERATIONS OR THE VOTE OF ANY PARTICULAR GRAND JUROR TO ANYONE, EVEN THE GOVERNMENT LAWYERS, ONCE THE VOTE HAS BEEN DONE. THAT'S ONLY THE BUSINESS OF THE GRAND JURY. IN OTHER WORDS, YOU'RE NOT TO INFORM THE GOVERNMENT LAWYER WHO VOTED ONE WAY ON THE INDICTMENT AND WHO VOTED THE OTHER WAY.

LET ME CONCLUDE NOW -- I APPRECIATE YOUR PATIENCE, AND IT'S BEEN A LONG SESSION THIS MORNING -- BY SAYING THAT THE IMPORTANCE OF THE SERVICE YOU PERFORM IS DEMONSTRATED BY THE VERY IMPORTANT AND COMPREHENSIVE OATH WHICH YOU TOOK A SHORT WHILE AGO. IT'S AN OATH THAT IS ROOTED IN OUR HISTORY AS A COUNTRY. THOUSANDS OF PEOPLE BEFORE YOU HAVE TAKEN A SIMILAR OATH. AND AS GOOD CITIZENS, YOU SHOULD BE PROUD TO HAVE BEEN SELECTED TO ASSIST IN THE ADMINISTRATION OF JUSTICE.

IT HAS BEEN MY PLEASURE TO MEET YOU. I WOULD BE HAPPY TO SEE YOU IN THE FUTURE IF THE NEED ARISES. AT THIS

POINT, THE U.S. ATTORNEY, MR. ROBINSON, WILL ASSIST YOU IN FURTHER ORGANIZATION. SO THIS PART OF THE ADMINISTRATION OF YOUR RESPONSIBILITY AS GRAND JURORS INVOLVING THE COURT IS OVER.

IT MIGHT BE APPROPRIATE TO TAKE A BREAK BEFORE WE GO ON TO THE NEXT PROCEEDING. I'VE HELD THESE FOLKS FOR A LONG TIME.

LADIES AND GENTLEMEN, MY GREAT PLEASURE TO MEET ALL OF YOU. GOOD LUCK WITH YOUR GRAND JURY SERVICE. I THINK YOU'LL FIND IT REWARDING AND INTERESTING AND COMPELLING.

--OOO--

I HEREBY CERTIFY THAT THE TESTIMONY ADDUCED IN THE FOREGOING MATTER IS A TRUE RECORD OF SAID PROCEEDINGS.

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